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LAW OFFICES
KOTEEN & NAFTALIN, L.L.P.
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036-4104

BERNARD KOTEEN*
ALAN Y. NAFTALIN
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
CHARLES R. NAFTALIN
GREGORY C. STAPLE
R. EDWARD PRICE
JULIE A. BARRIE
• SENIOR COUNSEL

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915

April 27, 1999

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HAND DELIVERED

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.,
Washington, D.C. 20554

Re: CC Docket No. 96-98 and CC Docket No. 99-68

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom or TDS), are an original and 4 copies of its reply comments on the jurisdictional separations issues raised in the comments filed by the state members of the Federal-State Joint Board on Separations.

In the event of any questions concerning this matter, please communicate with this office.

Very Truly Yours,


Margot Smiley Humphrey

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act)	
of 1996)	
)	
Inter-Carrier Compensation)	CC Docket No. 99-68
for ISP-Bound Traffic)	

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS Telecom), on behalf of its 105 incumbent local exchange carriers (ILECs) and by its attorneys, files this brief reply solely to comment on the jurisdictional separations issues raised in the comments filed in the above-captioned proceeding on April 16, 1999 by the state members of the Federal-State Joint Board on Separations.

Introduction and Summary

TDS Telecom believes that the state members' filing correctly stresses the need for prompt Joint Board action to minimize the necessity for state commissions or incumbent local exchange carriers to take further action unilaterally and to avoid the jurisdictional pitfalls created by the Commission's confusing and internally conflicting stance on jurisdiction over, and treatment of, interstate access for Information Service Providers (ISPs). Regardless of what long

term policy should ultimately be adopted, the current disarray that characterizes ISP access issues plainly warrants the state members' plea that "questions surrounding the interpretation of the Part 36 rules should be quickly addressed by the Joint Board on Separations." TDS Telecom urges them to press their co-members on the Separations Joint Board to act immediately to freeze the separations factors to prevent further distortions -- and pressures on local rates -- from the growth in Internet traffic. An immediate freeze will allow the Joint Board to give the longer term separations implications the careful scrutiny that unraveling the present tangle will necessarily require.

The Separations Treatment of Internet Access Traffic Is In Disarray

As the state members point out, the Commission's recent action acknowledging that Internet Access traffic is "largely interstate" has further distorted the ongoing anomalies in cost recovery and jurisdictional separations caused by the Commission's exemption from interexchange access charges for ISPs. The Commission seems to think ILECs and states will continue to consider Internet dial up access as "intrastate" because the Commission has "treat[ed] ISP traffic as if it were local, by permitting ISPs to purchase their PSTN links through local business tariffs." In the order portion of the NPRM under consideration here, the Commission claimed that it has "discharged its interstate regulatory obligations through the application of local business tariffs." The state members take issue with the Commission's authority to do so.

Meanwhile, the Commission has not criticized SBC's treatment of dial-up Internet access as interstate minutes of use and has flatly reiterated that "[t]he fact that ESPs are exempt from access charges and purchase their PSTN links through local tariffs does not transform the nature of the traffic routed to ESPs."¹ In the same document, though, the Commission inconsistently assumes that ILECs will "account for" the "costs and revenues" for at least their "links" or "connections" to ISPs as intrastate.² To top off the regulatory confusion, political commitments and pressures make it clear that the Commission will not abandon the ISPs' exemption from interstate access charges as a way to provide interstate cost recovery for this traffic it has now recognized as mainly interstate. Thus, undeniably, the current status of these crucial jurisdictional, cost allocation and cost recovery issues is controversial, uncertain, confused and hopelessly muddled.

The Complexities of the Current Inconsistencies and Anomalies Will Require a Careful, Holistic Resolution that Cannot Be Crafted in Haste

The record in the separations rulemaking docket demonstrates that the state members' conclusion that "prompt action is required" is unquestionably correct, but that a long term resolution is not yet possible. Thus, TDS Telecom urges the state members to encourage their

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Dockets No. 96-98 and 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-38, n. 76 and ¶16 (rel. Feb. 26, 1999).

² *Id.* at ¶ 36.

federal joint board co-members to join in immediate action. However, the current tangled policy web is far too important, complicated and politically sensitive to resolve in haste, without careful and comprehensive attention to the interlocking issues of properly allocating jurisdictional authority and responsibility for preventing confiscation, encouraging Internet growth and avoiding economically inefficient market signals.

Consequently, TDS Telecom strongly urges the Separations Joint Board to act promptly to freeze the separations factors as an interim measure to arrest the mounting separations distortions the record in CC Docket No. 80-286 demonstrates are occurring. Only via a prompt interim freeze, TDS Telecom submits:

- can the state members' laudable call for "prompt action" be met without prejudicial and unlawful additional shifts of further interstate costs for Internet access into the intrastate jurisdiction,
- can customers and ILECs be spared from unwarranted local rate pressures and revenue shortfalls and
- can this Commission fulfill its constitutional duty to prevent confiscation insofar as interstate costs are concerned.

The interim freeze will allow the Commission and the Joint Board to develop, evaluate and implement the holistic solution that these thorny and interlinking issues necessitate.

Conclusion

In light of the current regulatory crisis caused by the clash of the Commission's interstate jurisdiction over Internet access and the need to design interstate cost recovery that does not

impose usage-sensitive access charges on ISPs, TDS Telecom urges the state Joint Board members to initiate an immediate cooperative effort with the federal members of the Separations Joint Board to freeze the separations factors to curtail further Internet-use-driven jurisdictional distortions.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORPORATION

By: /s/ Margot Smiley Humphrey
Margot Smiley Humphrey

KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700
margot.humphrey@koteen.com

April 27, 1999

CERTIFICATE OF SERVICE

I, Victoria C. Kim, of Koteen & Naftalin, hereby certify that true copies of the foregoing Reply Comments of TDS Telecom on the jurisdictional separations issues filed by the state members of the Federal-State Joint Board on Separations, have been served on the parties listed below, via first class mail, postage prepaid on the 27th day of April 1999.

* Magalie Roman Salas (one original, four copies)
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, D.C. 20554

*Wanda Harris (one copy, one diskette)
Federal Communications Commission
Common Carrier Bureau
Competitive Pricing Division
445 Twelfth Street, S.W.,
Fifth Floor
Washington, D.C. 20554

*ITS, Inc. (one copy, one diskette)
1231 20th Street, N.W.
Washington, D.C. 20036

*The Honorable Susan Ness, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Suite 8B115
Washington, D.C. 20554

Commissioner David W. Rolka
Pennsylvania Public Utility Commission
North and Commonwealth
Harrisburg, PA 17105-3265

Commissioner John H. Smith
Oregon Public Utility Commission
550 East Capitol Street, NE
Salem, OR 97310-1380

Commissioner Thomas L. Welch
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, MA 04333-0018

Commissioner James M. Posey
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501-1693

James Bradford Ramsey
NARUC
P.O. Box 684
Washington, D.C. 20044-0684

Sandra Ibaugh
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington, Suite E-306
Indianapolis, IN 46204

Samuel Loudenslager
Arkansas Public Service Commission
1000 Center Street
Little Rock, AZ 72201

Johnathan Lakritz
California Public Utilities Commission
California State Building
505 Van Ness Avenue
San Francisco, CA 94102-3298

Scott Potter
Ohio Public Utilities Commission
180 East Broad Street
Columbus, OH 43215-3793

Jeffrey J. Richter
Wisconsin Public Service Commission
610 North Whitney Way
Madison, WI 53705

Joel Shiftman
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333-0018

Frederick Sistarenik
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Richard A. Askoff
Regina McNeil
NECA
100 South Jefferson Road
Whippany, NJ 07981

Kathleen A. Kaercher
Stuart Polikoff
OPASTCO
21 Dupont Circle, N.W.,
Suite 700
Washington, D.C. 20036

Todd F. Silbergeld
SBC Communications, Inc.
1401 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John W. Hunter
USTA
1401 H Street, N.W.
Suite 600
Washington, D.C. 200085

Emmanuel Staurulakis
President
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, MD 20706

Peter Arth, Jr.
Lionel B. Wilson
Ellen S. Levine
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

L. Marie Guillory
Jill Canfield
NTCA
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Ronald L. Plessner
Mark J. O'Connor
Commercial Internet Exchange Association
1200 Nineteenth Street, N.W.
Suite 700
Washington, D.C. 20036

Gary Phillips
Counsel for Ameritech
1401 H Street, N.W.,
Suite 1020
Washington, D.C. 20005

Pat Wood, III
Judy Walsh
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Carol Ann Bischoff
Terry Monroe
The Competitive Telecommunications
Association
1900 M Street, N.W.
Suite 800
Washington, D.C. 20036

Robert J. Aamoth
Steven A. Augustino
John J. Heitmann
Kelley Drye & Warren llp
1200 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036

* denotes hand delivery


Victoria C. Kim